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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Department of Agriculture
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Liz Sneed
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Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Tennessee Department of Agriculture, Porter Building Conference Room 1		
Address 2:	436 Hogan Road		
City:	Nashville, Tennessee		
Zip:	37220		
Hearing Date:	Thursday, April 22, 2021		
Hearing Time:	10:00 a.m.	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

This rule is intended to reduce the volume of statewide pesticide regulation and to clarify and simplify requirements for the sale, distribution, and application of pesticides in the state.

Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0080-09-01	Classification and Management of Pesticides
Rule Number	Rule Title
0080-09-01-.01	Scope
0080-09-01-.02	Classification of Pesticides

0080-09-01-.03	Pesticide Management and Disposal
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Chapter Number	Chapter Title
0080-09-02	Service Categories and Testing
Rule Number	Rule Title
0080-09-02-.01	Scope
0080-09-02-.02	Definitions
0080-09-02-.03	License Categories
0080-09-02-.04	Certification Categories
0080-09-02-.05	License and Certification Testing
0080-09-02-.06	Repealed
0080-09-02-.07	Repealed
0080-09-02-.08	Repealed
0080-09-02-.09	Repealed
0080-09-02-.10	Repealed
0080-09-02-.11	Repealed
0080-09-02-.12	Repealed
0080-09-02-.13	Repealed
0080-09-02-.14	Repealed

Chapter Number	Chapter Title
0080-09-03	Pesticide Registration, Distribution, and Sales
Rule Number	Rule Title
0080-09-03-.01	Scope
0080-09-03-.02	Definitions
0080-09-03-.03	Pesticide Registrations
0080-09-03-.04	Pesticide Dealers
0080-09-03-.05	Inspections
0080-09-03-.06	Violations

Chapter Number	Chapter Title
0080-09-04	Pesticide Applications
Rule Number	Rule Title
0080-09-04-.01	Scope
0080-09-04-.02	Definitions
0080-09-04-.03	Charter Application and Fees
0080-09-04-.04	License Application and Fees
0080-09-04-.05	Certification Application and Fees
0080-09-04-.06	Records
0080-09-04-.07	Inspections
0080-09-04-.08	Requirements of Specific Categories and Pesticides
0080-09-04-.09	Violations
0080-09-04-.10	Repealed
0080-09-04-.11	Repealed
0080-09-04-.12	Repealed

Chapter Number	Chapter Title
0080-09-06	Aerial Applications of Pesticides
Rule Number	Rule Title
0080-09-06-.01	Scope
0080-09-06-.02	Definitions
0080-09-06-.03	License Application and Fees
0080-09-06-.04	Records
0080-09-06-.05	Inspections
0080-09-06-.06	Violations

New

Chapter 0080-09-01
Classification and Management of Pesticides

0080-09-01-.02 Classification of Pesticides.

- (1) General use pesticide is any pesticide other than restricted use pesticides.
- (2) Restricted use pesticide is any pesticide identified as restricted use pesticide either on its label approved by EPA or its registration issued by the department.

Authority: T.C.A. §§ 4-3-203, 43-8-106, 43-8-302, and 62-21-118.

0080-09-01-.03 Pesticide Management and Disposal.

- (1) Pesticides shall be maintained in a manner consistent with their labeling.
- (2) Unless otherwise provided by their labeling,
 - (a) Pesticides shall be maintained in containers or structures that are liquid tight; protected from damage by weather, personnel, or equipment; and secure from accidental spills, leakage, or washing;
 - (b) Pesticide spills, leakage, or washing shall be cleaned on the same day they occur unless a delay is necessary for protection of human health. Cleanup must be conducted in a manner reasonably calculated to maximize pesticide recovery and to protect the public health and safety; and,
 - (c) Pesticide transfers from one container to another must be attended by a pesticide certification holder at all times.
- (3) Requirements of this rule are interpreted and applied consistent with the applicable pesticide label, federal guidance regarding pesticide use and registration, and 40 C.F.R. §165, Subparts A and E.

Authority: T.C.A. §§ 4-3-203, 43-8-106, and 62-21-118.

Chapter 0080-09-03
Pesticide Registration, Distribution, and Sales

0080-09-03-.03 Pesticide Registrations.

- (1) Persons shall not distribute, sell, or offer for sale pesticides within the state unless the pesticide is registered with the department or the person or product is exempt from registration under the Act.
- (2) Application for registration shall be made on forms provided by the department, which shall be completed in full and may include:
 - (a) Name of the registrant;
 - (b) Date of birth of any registrant who is an individual or a partner in a general partnership;
 - (c) Proof of one of the following for any registrant who is not an individual or a partner in a general partnership:
 1. Entity registration in its state of incorporation; or,
 2. Entity's business license issued by a local governmental authority;

- (d) Contact information for registrant, to include name of person legally responsible for applicant's operations, telephone number, email address, and address of the principal place of business;
 - (e) Address of any location used by registrant in the manufacture, sale, holding, or distribution of pesticides;
 - (f) The pesticide name and copy of its label necessary for registration of the product;
 - (g) Other information as required by the department or the Act.
- (3) Registrants shall notify the department of any changes to the information or contents of an application within 30 days after the change takes place.
- (4) Registrants shall include with their application payment of a fee as appropriate for the following.
- (a) Pesticide Manufacturer Registration. A pesticide manufacturer registration is required per pesticide product for any person who produces a pesticide that is packaged and sold, offered for sale, distributed or transported in commerce within the state. Applicants shall submit with their application a pesticide registration statement in accordance with the Act. The fee for a pesticide manufacturer registration is a Tier 5 annual fee under T.C.A. §43-1-703(f). Pesticide manufacturer registrations expire on June 30 following their issuance. Applicants for renewal shall submit the appropriate annual fee to the department on or before July 1 of each year. If an applicant for renewal fails to pay the annual fee by the following July 16, the applicant shall also be required to pay a late charge under T.C.A. §43-1-703 prior to renewal of the applicant's registration.
 - (b) 24-C Label Registration. A 24-C is a special local needs label for use of a pesticide in the state that is not otherwise permitted or controlled by the pesticide's federally approved label. A 24-C label operates as a supplemental label and is binding on the pesticide's use in Tennessee. A 24-C label is read in conjunction with and not in lieu of the federally approved label; however, for any conflicting provisions between the two labels, the 24-C label shall control. Any person holding a pesticide manufacturer registration may request a 24-C label for the registered pesticide. 24-C label registrations expire five years from their date of issuance. The fee for a 24-C label registration is a Tier 6 fee under T.C.A. §43-1-703(f).
- (5) The department may deny any application for a registration that is not completed in accordance with this rule.

Authority: T.C.A. §§ 4-3-203, 43-8-104, 43-8-106, and 43-8-113.

0080-09-03-.04 Pesticide Dealers.

- (1) A pesticide dealer license is required per person per location where restricted use pesticides are sold or offered for sale within the state. The fee for a pesticide dealer license is a Tier 2 annual fee under T.C.A. §43-1-703(f). Pesticide dealer licenses expire on June 30 following their issuance. Applicants for renewal shall submit the appropriate annual fee to the department on or before July 1 of each year. If an applicant for renewal fails to pay the annual fee by the following July 16, the applicant shall also be required to pay a late charge under T.C.A. §43-1-703 prior to renewal of the license.
- (2) Application for a pesticide dealer license shall be made on forms provided by the department, which shall be completed in full and may include:
- (a) Name of the applicant;
 - (b) Date of birth of any applicant who is an individual or a partner in a general partnership;
 - (c) Proof of one of the following for any applicant who is not an individual or a partner in a general partnership:

1. Entity registration in its state of incorporation; or,
 2. Entity's business license issued by a local governmental authority;
- (d) Contact information for applicant, to include name of person legally responsible for applicant's operations, telephone number, email address, and address of the principal place of business;
 - (e) Address of location where restricted use pesticides are offered for sale;
 - (f) Proof of current Pesticide Dealer (C12) certification for at least one person employed by applicant; and,
 - (g) Other information as required by the department or the Act.
- (3) Applicants shall notify the department of any changes to the information or contents of an application within 30 days after the change takes place.
 - (4) Dealer licensees must employ, per licensed location, at least one person who holds a Pesticide Dealers (C12) certification.
 - (a) Individual salespersons at a licensed location do not need individual C12 certification; however, the C12 certification holder and the dealer licensee shall be responsible for all sales of restricted use pesticides at the location and any associated violations of the Act or this chapter.
 - (b) Licensees shall maintain the following records of restricted use pesticide sales for two years from the date of sale: name and certification number of the purchaser; name, EPA registration number, and amount of pesticide purchased; expiration date of purchaser certification; and date of sale.
 - (5) The department may deny any application for a dealer license that is not completed in accordance with this rule.

Authority: T.C.A. §§ 4-3-203, 43-8-106, and 43-8-113.

0080-09-03-.05 Inspections.

- (1) The department may enter any location or conveyance where the department has reason to believe a person is engaged in the business of manufacturing, selling, offering for sale, transporting or distributing pesticides in commerce. The department may enter such location or conveyance for the purpose of sampling substances or equipment; examination of pesticides and records; and copying of records as necessary to determine compliance with the Act and this chapter.

Authority: T.C.A. §§ 4-3-203 and 43-8-106.

0080-09-03-.06 Violations.

- (1) In addition to other requirements of the Act and this chapter, pesticide dealer licensees and registration holders shall:
 - (a) Maintain areas where pesticides are housed so as to be readily accessible for inspection;
 - (b) Maintain records required under this chapter so as to be readily available for inspection;
 - (c) Give full information as to the origin or destination of pesticides sold or offered for sale; and,
 - (d) Manage and dispose of pesticides in a manner consistent with this division of rules.

- (2) In addition to other requirements of the Act and this chapter, pesticide dealer licensees and registration holders shall not:
 - (a) Sell, offer for sale, or distribute in commerce any pesticide without a registration and dealer license required by this chapter;
 - (b) Knowingly provide any false, misleading, or incorrect information regarding the person's sale, offer for sale, or distribution of pesticides in commerce;
 - (c) Interfere with a representative of the department in the performance of his or her duties;
 - (d) Violate any order issued by the department; or,
 - (e) Sell any restricted use pesticide to an uncertified purchaser.
- (3) A person shall not purchase a restricted use pesticide unless certified by the department.
- (4) A person shall not use pesticide inconsistent with its labeling.
- (5) A person is responsible for violations of the Act or this chapter when committed by either the person or his agent.
- (6) Each violation of the Act or this chapter is grounds for issuance of stop sale or disposal orders against any pesticide held by the violator or his agent; denial or revocation of any registration, certification, or license issued by the department; actions for injunction; and imposition of civil penalties or criminal charges against the violator.

Authority: T.C.A. §§ 4-3-203 and 43-8-106.

Chapter 0080-09-06
Aerial Applications of Pesticides

0080-09-06-.01 Scope.

- (1) This chapter applies to any person who applies pesticides through use of an aircraft.
- (2) Persons licensed under this chapter shall be responsible for operations under their license until it expires or until the department receives written notification desiring it be terminated. The department shall not refund fees for early termination of a license issued under this chapter.
- (3) Licenses issued under this chapter are not transferable from person to person or aircraft to aircraft.

Authority: T.C.A. §§ 4-3-203 and 43-8-302.

0080-09-06-.02 Definitions.

- (1) Terms in this chapter share those meanings of terms set forth in T.C.A. §43-8-301; and,
- (2) Act means T.C.A. §43-8-301, et seq.

Authority: T.C.A. §§ 4-3-203 and 43-8-302.

0080-09-06-.03 License Application and Fees.

- (1) Unless exempted under the Act, an aerial application license is required per pilot per aircraft for pesticide applications made through use of an aircraft. Aerial application licenses are issued only to individuals and not formalized business entities.
- (2) Application for an aerial application license shall be made on forms provided by the department, which shall be completed in full and may include:
 - (a) Name and date of birth of the applicant;
 - (b) Contact information for applicant, to include employer's name, telephone number, email address, and address of the principal place of business;
 - (c) Address of charter holder's office where licensee will be employed (applicable for those making custom applications of pesticide);
 - (d) Proof of Federal Aviation Authority pilot's license required under the Act;
 - (e) Proof of current pesticide certification in the applicable category of service;
 - (f) Proof of insurance required under the Act; and,
 - (f) Other information as required by the department.
- (3) Licensees shall notify the department of any changes to the information or contents of an application within 30 days after the change takes place.
- (4) The fee for an aerial application license is a Tier 5 annual fee under T.C.A. §43-1-703(f) for each category of service licensed. The fee for an aerial decal is a Tier 4 annual fee. License and decal fees are not prorated.
- (5) All aerial application licenses and decals expire on June 30 following their issuance. Applicants for renewal shall submit the appropriate fees and required application materials (e.g. proof of pilot's license, current pesticide certification, and insurance) to the department on or before July 1 following expiration.
 - (a) If an applicant for renewal fails to pay required fees or to provide required application materials on or before July 16 following expiration of the license, the applicant shall also be required to pay a late charge assessed under T.C.A. § 43-1-703 prior to renewal of the applicant's license.
 - (b) Lapse of insurance or certification at any time shall result in immediate expiration of the license. Firms shall be afforded a grace period of 30 days to submit proof of valid insurance to the department without accrual of charges. Following the grace period, firms shall be required to obtain a new aerial application license and pay all associated fees necessary for operation.
- (6) The department may deny any application for a license that is not completed in accordance with this rule.

Authority: T.C.A. §§ 4-3-203 and 43-8-302.

0080-09-06-.04 Records.

Records of aerial application of pesticide shall be made and maintained in accordance with the Act.

Authority: T.C.A. §§ 4-3-203 and 43-8-302.

0080-09-06-.05 Inspections.

- (1) The department may enter any location where the department has reason to believe a person is engaged in preparation or conduct of aerial applications of pesticide. The department may enter that location for

the purposes of sampling; examination of equipment, pesticides, and application sites; and examining and copying of records, as necessary to determine compliance with the Act and this chapter.

Authority: T.C.A. §§ 4-3-203 and 43-8-302.

0080-09-06-.06 Violations.

(1) Requirements of licensees.

(a) In addition to other requirements of the Act and this chapter, licensees shall:

1. Maintain areas where pesticides and equipment are housed so as to be readily accessible for inspection;
2. Maintain records required under this chapter so as to be readily available for inspection;
3. Give full information as to the manner of any pesticide application and source of pesticides applied or pesticides held for application; and,
4. Manage and dispose of pesticides in a manner consistent with this division of rules.

(b) In addition to other requirements of the Act and this chapter, licensees shall not:

1. Apply pesticides for which certification is required unless certified in the applicable category of service;
2. Authorize an aerial application of pesticide by an unlicensed person even if under the direct supervision of a licensee;
3. Apply pesticide inconsistent with label directions;
4. Falsify the presence of an insect pest or any portion of a record required under this chapter;
5. Knowingly provide any false, misleading, or incorrect information regarding the person's sale, offer for sale, or distribution of pesticides in commerce;
6. Interfere with a representative of the department in the performance of his or her duties; or,
7. Violate any order issued by the department.

(2) A person is responsible for violations of the Act or this chapter when committed by either the person or his agent.

(3) Each violation of the Act or this chapter is grounds for issuance of stop work or disposal orders against any pesticide held by the violator or his agent; denial or revocation of any charter, license, or certification issued by the department; actions for injunction; and imposition of civil penalties or criminal charges against the violator.

Authority: T.C.A. §§ 4-3-203 and 43-8-302.

Amendments

Chapter 0080-09-01
Classification and Management of Pesticides

Chapter 0080-09-01 Classification of Pesticides is amended to re-title the chapter “Classification and Management of Pesticides.”

Authority: T.C.A. §§ 4-3-203, 43-8-106, 43-8-302, and 62-21-118.

Rule 0080-09-01-.01 Reserved is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-09-01-.01 Scope.

- (1) Classification of pesticides under this chapter applies for construction and interpretation of the Tennessee Insecticide, Fungicide, and Rodenticide Act and the aerial application of pesticides law, compiled at Tennessee Code title 43, chapter 8; the Tennessee Application of Pesticides Act of 1978, compiled at Tennessee Code title 62, chapter 21; and all rules of the department.
- (2) Unless the context requires otherwise, pesticide without reference to a particular pesticide classification means any general use or restricted use pesticide.

Authority: T.C.A. §§ 4-3-203, 43-8-106, 43-8-302, and 62-21-118.

Chapter 0080-09-02 Service Categories and Testing

Chapter 0080-09-02 Restricted Use Pesticides is amended by re-titling the chapter “Service Categories and Testing”.

Authority: T.C.A. §§ 4-3-203, 43-8-106, 43-8-302, and 62-21-118.

Rule 0080-09-02-.01 Scope is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-09-02-.01 Scope.

This chapter applies to any person who applies for or is required to have a pesticide license or certification issued under the Tennessee Insecticide, Fungicide, and Rodenticide Act or the Tennessee Application of Pesticides Act of 1978.

Authority: T.C.A. §§ 4-3-203, 43-8-106, 43-8-302, and 62-21-118.

Rule 0080-09-02-.02 Definitions is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-09-02-.02 Definitions.

- (1) Terms in this chapter share those meanings of terms set forth in the Tennessee Application of Pesticides Act of 1978, T.C.A. §62-21-101, et seq.
- (2) When used in the Act or this chapter, unless the context requires otherwise:
 - (a) Act means the Tennessee Application of Pesticides Act of 1978, compiled at T.C.A. §62-21-101, et seq.;
 - (b) Agricultural means related to pasture or lands used in the production of food or fiber crops. This

definition applies exclusively to rules under this chapter and not to any other law or rule interpreted or enforced by the department;

- (c) Agricultural seed means the seed of grass, forage, cereal, fiber crops and other kinds of seed commonly recognized as agricultural seed or mixtures of agricultural seed;
- (d) Commercial certification and words of similar import mean any pesticide certification other than private applicator certification;
- (e) Full-time means a yearly average of at least 35 hours per week;
- (f) Fumigation means the application of gas even if the substance that is applied is originally a solid or liquid that later turns to gas upon being dispensed;
- (g) Person means an individual, partnership, corporation, or any other form of legal entity;
- (h) Pest or disease means any insect, rodent, fungi, bacteria, plant life, or biotic agent that is injurious either to the environment or to the agricultural, horticultural, silvicultural, or other interests of the state. Pest or disease includes insect pests and plant diseases as defined under the Tennessee Plant Pest Act, compiled at T.C.A. §43-6-101, et seq., and may also include any form of animal or plant life, any infectious plant disease, or any plant disorder that manifests symptoms or behavior determined by a federal or state pest prevention agency to be characteristic of infectious disease;
- (i) Reciprocity means certification from another state that the department recognizes as equivalent in effect to certification standards under this chapter;
- (j) Related course of study means agriculture, biology, chemistry, forestry, horticulture, entomology, plant pathology, plant science, or similar course of study conferred by an accredited institution of higher education;
- (k) Vegetable seed means the seed of crops generally grown in gardens or farms and sold under the name of a vegetable seed.

Authority: T.C.A. §§ 4-3-203 and 62-21-118.

Rule 0080-09-02-.03 Certification Requirements is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-09-02-.03 License Categories.

- (1) Agricultural – Ground Equipment (AGE). An AGE license is required for any person who supervises branch operations for custom pesticide applications made by means other than fumigation to control agricultural pests. This license is not applicable to control of pests covered under other specific license categories. Certification required: Agricultural Pest Control (C01). Alternative requisites to experience/education: HLT license, HRI license, WEC license, or certification through the Certified Crop Advisor program offered by the American Society of Agronomy.
- (2) Aquatic Pest Control (APC). An APC license is required for any person who supervises branch operations for custom pesticide applications to control aquatic plants or algae. Certification required: Aquatic Pest Control (C05).
- (3) Bird Control (BDC). A BDC license is required for any person who supervises branch operations for custom pesticide applications to control birds. Certification required: Industrial, Institutional, Structural, and Health-Related Pest Control (C07).
- (4) Forest Pest Control (FPC). An FPC license is required for any person who supervises branch operations for custom pesticide applications to control tree pests and diseases in locations used for production of timber and related products or preservation of forest lands. Certification required: Forest Pest Control

(C02).

- (5) Fumigation – Soil (FUS). An FUS license is required for any person who supervises branch operations for custom pesticide applications made by soil fumigation to control pests. Certification required: Agricultural Pest Control (C01).
- (6) Fumigation – Structural (FUM). An FUM license is required for any person who supervises branch operations for custom pesticide applications made by fumigation to control non-agricultural pests. A FUM or WDO license is also required for any person who makes a custom application of pesticides for control of wood destroying beetles. Certification required: Industrial, Institutional, Structural, and Health-Related Pest Control (C07).
- (7) General Pest and Rodent Control Pesticide License (GRC). A GRC license is required for any person who directly supervises or applies pesticides at sites covered under T.C.A. § 62-21-124 (e.g. buildings used for food preparation, human lodging, religious instruction, or education) and any person who supervises branch operations for custom pesticide applications to control pests generally known to invade a structure. This category includes control of pests both in and around structures, e.g. fire ants, fleas, and ticks in residential and commercial lawns. Certification required: Industrial, Institutional, Structural, and Health-Related Pest Control (C07).
- (8) Horticulture – Interior (HRI). An HRI license is required for any person who supervises branch operations for custom pesticide applications to control plant pests in the interior of non-agricultural settings such as conservatories, shopping malls, and the like. An HRI license is not required for applications in greenhouses. Certification required: Ornamental and Turf Pest Control (C03). Alternative requisites to experience/education: AGE license, HLT license, or WEC license.
- (9) Horticulture – Lawn and Turf (HLT). An HLT license is required for any person who supervises branch operations for custom pesticide applications to control pests in non-agricultural landscape not immediately associated with a structure, e.g. disease in residential and commercial lawns; pests or disease in institutional gardens; and fire ants, fleas, and ticks in parks, athletic fields, and golf courses. This category does not include applications for control of pests in or around structures. Certification required: Ornamental and Turf Pest Control (C03). Alternative requisites to experience/education: AGE license, HRI license, WEC license, or certification through the Certified Crop Advisor program offered by the American Society of Agronomy.
- (10) Microbial Pest Control (MPC). An MPC license is required for any person who supervises branch operations for custom pesticide applications to control microorganisms, including specific bacteria or viruses. Certification required: Microbial Pest Control (C14).
- (11) Mold Remediation (MRC). An MRC license is required for any person who supervises branch operations for custom pesticide applications to control mold and fungus in structures. Certification required: Industrial, Institutional, Structural, and Health-Related Pest Control (C07) or Microbial Pest Control (C14).
- (12) Pest Control Consultant (PCC). A PCC license is required for any person who supervises demonstrations of pesticide products or consultations for the use of pesticides. A PCC license does not authorize private or custom applications of pesticide for which another certification or license is required. Certification required: Demonstration, Research, and Regulatory Pest Control (C10).
- (13) Public Health Mosquito Control (PHMC). A PHMC license is required for any person who supervises pesticide applications to control mosquitoes on public land or public waters. Certification required: Public Health Pest Control (C08). Alternative requisites to experience/education: GRC license.
- (14) Weed Control – Right-of-Way Industrial (WEC). A WEC license is required for any person who supervises branch operations for custom pesticide applications to control plants on industrial sites and rights-of-way (e.g. highways, transmission lines, drainage ditches, etc.). Certification required: Right-of-Way Pest Control (C06). Alternative requisites to experience/education: AGE license, HLT license, or HRI license.
- (15) Wood Destroying Organisms (WDO). A WDO license is required for any person who supervises branch operations for wood destroying organism inspections or custom pesticide applications to control termites, wood borers, carpenter bees, carpenter ants, or decay in structures. A WDO or FUM license is also

required for any person who makes a custom application of pesticides for control of wood destroying beetles. Certification required: Industrial, Institutional, Structural, and Health-Related Pest Control (C07). Experience/education prerequisites for WDO are:

- (a) Masters or doctoral degree in entomology; and certificate from the Tennessee Apprentice Termite Technician School offered by the department;
 - (b) One year of full-time work experience that required C07 certification; and a baccalaureate degree with a major or minor in a related course of study; or,
 - (c) Two years of full-time work experience that required C07 certification.
- (16) Wood Preservatives (WPC). A WPC license is required for any person who supervises branch operations for custom pesticide applications to control damaging effects of pests or weather on wood in non-structural applications (e.g. insects, fungi, marine borers, etc. in pole or cross tie treatments and wood manufacture or distribution). Certification required: Wood Preservatives (C11).
- (17) Special Pesticide License (SPC). An SPC license is required for any person who supervises branch operations for custom pesticide applications in situations and methods not covered under any other license category. Applicants for an SPC license are subject to examination and qualification requirements as determined by the department, upon advice of the Pest Control Advisory Board, for each SPC license that is issued.

Authority: T.C.A. §§ 4-3-203, 43-8-106, and 62-21-118.

Rule 0080-09-02-.04 License Requirements is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-09-02-.04 Certification Categories.

- (1) Categories of service.
- (a) Agricultural Pest Control (C01). C01 certification is required for any person who makes, solicits, or authorizes by presence a custom or restricted use pesticide application on agricultural crops or pasture.
 - (b) Forest Pest Control (C02). C02 certification is required for any person who makes, solicits, or authorizes by presence a custom or restricted use pesticide application on forests, forest nurseries, or forest seed producing areas.
 - (c) Ornamental and Turf Pest Control (C03). C03 certification is required for any person who makes, solicits, or authorizes by presence a custom or restricted use pesticide application on non-agricultural landscape (e.g. ornamental trees, plants, grasses, fruit trees, shrubs, flowers, turf, lawns, golf courses, and athletic fields).
 - (d) Seed Treatment (C04). C04 certification is required for any person who makes, solicits, or authorizes by presence a custom or restricted use pesticide application on agricultural or vegetable seeds.
 - (e) Aquatic Pest Control (C05). C05 certification is required for any person who makes, solicits, or authorizes by presence a custom or restricted use pesticide application on aquatic environments or any pesticide application on state waters.
 - (f) Right-of-Way Pest Control (C06). C06 certification is required for any person who makes, solicits, or authorizes by presence any pesticide application on rights-of-way for public roads, electric power lines, pipelines, railways, industrial sites, highways, transmission lines, or drainage ditches, etc.
 - (g) Industrial, Institutional, Structural, and Health-Related Pest Control (C07). C07 certification is

required for any person who makes, solicits, or authorizes by presence a custom or restricted use pesticide application in, on, or around physical facilities, whether public or private (e.g. food establishments, human dwellings, schools, child-services establishments, hospitals, industrial establishments, warehouses, grain elevators, etc.). The C07 category includes pesticide applications for control of birds.

- (h) Public Health Pest Control (C08). C08 certification is required for any person, including any governmental employee in the course of employment, who makes, solicits, or authorizes by presence any pesticide application for control of public health pests on public land or public waters. This category applies specifically to mosquitoes, rats, and other pests generally known to pose threat for spreading disease.
 - (i) Limited Herbicide Applicator (C09). C09 certification is required for any person who makes, solicits, or authorizes by presence a custom application of pesticide with the sole active ingredient Glyphosate, incident to commercial lawn and landscape maintenance.
 - (j) Demonstration, Research, and Regulatory Pest Control (C10). C10 certification is required for any person who commercially demonstrates pesticide products, including any governmental employee in the course of employment, who recommends, uses, or authorizes by presence a pesticide application on private lands or private waters or on public lands for field research. C10 certification does not authorize custom applications of pesticides.
 - (k) Wood Preservatives (C11). C11 certification is required for any person who makes, solicits, or authorizes by presence a custom or restricted use pesticide application for wood preservation.
 - (l) Pesticide Dealer (C12). C12 certification is required for at least one person per location where restricted use pesticides are sold or offered for sale within the state. C12 certification authorizes the holder to purchase and to use restricted use pesticides but does not authorize the holder to make custom applications of pesticides.
 - (m) Antifouling Marine Paint (C13). C13 certification is required for any person who makes, solicits, or authorizes by presence a custom or restricted use pesticide application of antifouling marine paints.
 - (n) Microbial Pest Control (C14). C14 certification is required for any person who makes, solicits, or authorizes by presence a custom or restricted use pesticide application to control microorganisms.
 - (o) Reserved.
 - (p) Sewer Line Treatment (C16). C16 certification is required for any person who makes, solicits, or authorizes by presence any pesticide application to control pests in sewer lines or wastewater treatment facilities.
 - (q) Private Applicator certification is required for any person who makes or authorizes by presence a private, restricted use pesticide application for production of an agricultural commodity.
- (2) Service competencies.
- (a) Competency of each category includes practical knowledge of landscapes or waterscapes where pesticides are expected to be applied; associated pests and their population dynamics; pre-harvest and restricted entry intervals, as applicable; specific pesticides toxicity and phytotoxicity; residue potential; proper storage, handling, transport, use and disposal of specific pesticides; and non-target injuries and other hazards associated with pesticide applications.
 - (b) Competency for all categories is determined consistent with federal requirements at 40 C.F.R. § 171.103 and includes practical knowledge of pesticide labels; safety; environment; pests; pesticides; equipment; application methods; laws and regulations; responsibilities of supervising noncertified applicators; and professionalism of applicators.

Authority: T.C.A. §§ 4-3-203, 43-8-106, 43-8-302, and 62-21-118.

Rule 0080-09-02-.05 Certification Categories is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-09-02-.05 License and Certification Testing.

- (1) Commercial applicators. All testing requirements for licenses or commercial certifications must be completed and submitted to the department or its designee prior to sitting for examination.
 - (a) Age restrictions.
 1. Applicants for a license must be at least 18 years old prior to examination.
 2. Applicants for commercial certification must be at least 16 years old prior to examination. A commercial applicator under the age of 18 is prohibited from buying, selling, mixing, applying, or supervising the use or sale of restricted use pesticide.
 - (b) Applicants must submit a completed exam application, on forms provided by the department.
 - (c) Examination fees. Applicants for license examination must submit payment of a Tier 4 examination fee under T.C.A. §43-1-703(f). Applicants for commercial certification examination must submit payment of a Tier 1 examination fee under T.C.A. §43-1-703(f). Examination fees are required for each exam to be administered; retest of any exam requires separate application and payment of additional exam fees. Applicants may withdraw applications for examination up to five business days prior to a scheduled exam and receive a full refund of the examination fee. After that time, an applicant shall be ineligible for refund of the examination fee absent extraordinary circumstances.
 - (d) License exam qualifications. Applicants for license examination must show proof of qualifications required under this chapter and be certified in a pesticide category required for the pesticide license category being tested. Unless otherwise noted in the license category, applicants must also have completed one of the following education/experience prerequisites:
 1. Baccalaureate degree from an accredited college or university with a major or minor in a related course of study;
 2. One year of full-time work experience that required the applicable certification; and 12 college level semester credits in a related course of study; or
 3. Two years of full-time work experience that required the applicable certification.
 - (e) License exam passage eligibility. Upon passage of a license exam, the applicant shall be eligible for receipt of the corresponding license pending payment of license fees. Absent extraordinary circumstances, if an applicant does not secure the license through payment of applicable license fees within one year of the exam date, the exam passage shall expire, and the applicant shall be required to retake the exam prior to receiving a license.
- (2) Private applicators.
 - (a) Applicants for private applicator certification must be at least 18 years old prior to certification. Applicants age 16 or 17 years old are eligible for private applicator certification if they are of familial relation, by birth or adoption, to the owner or renter of the property where restricted use pesticides are applied. A private applicator under the age of 18 is prohibited from buying restricted use pesticide and from using or supervising the use of restricted use pesticide on property not owned or rented by a family relation.
 - (b) Applicants for private applicator certification must complete within the previous year and show proof of passing a specialized training course administered by the University of Tennessee Extension Service. Proof of passage requires a score of at least 70% and submission of the

course's three-part form signed by the extension agent administering the course.

- (3) Time, place, and manner of testing.
 - (a) Applicants sitting for a license or commercial certification exam must present valid, government-issued photo identification on the day of the examination.
 - (b) Examinations consist of substantive knowledge and/or specimen identification practicums relative to specific service categories. To pass examination, an applicant must score 70% or higher on the total exam.
 - (c) Any applicant who misrepresents qualifications for a pesticide license or who engages in cheating on any exam shall be given a failing score for the exam and shall be immediately removed from the testing site. The applicant shall forfeit payment of the examination fee and shall be ineligible to sit for any commercial certification or license examination for two years. The department shall also summarily revoke any license or certification previously issued to the applicant.
 - (d) The department may deny examination to any person who fails to comport with this rule.
- (4) Reciprocity. In lieu of examination, applicants may apply for certification based on reciprocity with another state.
 - (a) Applicants for reciprocal certification must show proof of equivalent certification in the reciprocating state. A list of reciprocating states and the certification equivalency requirements in those states is published at <https://www.tn.gov/agriculture/businesses/pesticides/certification.html>.
 - (b) Reciprocity satisfies the testing requirements and examination fees associated with receipt of certifications under this chapter.
 - (c) Reciprocity is not available for receipt or renewal of any pesticide license.

Authority: T.C.A. §§ 4-3-203, 62-21-111, 62-21-112, 62-21-118, and 62-21-123.

Chapter 0080-09-03
Pesticide Registration, Distribution, and Sales

Chapter 0080-09-03 Commercial Aerial Application of Pesticides is amended by re-titling the chapter "Pesticide Registration, Distribution, and Sales."

Authority: T.C.A. §§ 4-3-203 and 43-8-106.

Rule 0080-09-03-.01 General is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-09-03-.01 Scope.

- (1) This chapter applies to any person who purchases a restricted use pesticide and any person who manufactures, sells, offers for sale, transports or distributes any pesticides in commerce.
- (2) This chapter applies to any pesticide applications for which certification is not required.
- (3) Persons licensed, registered, or certified under this chapter shall be responsible for operations under their license, registration, or certification until it expires or until the department receives written notification desiring it be terminated. The department shall not refund fees for early termination of any license, registration, or certification issued under this chapter.

- (4) Licenses, registrations, and certifications issued under this chapter are not transferable from person to person.

Authority: T.C.A. §§ 4-3-203 and 43-8-106.

Rule 0080-09-03-.02 Denial of License is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-09-03-.02 Definitions.

- (1) Terms in this chapter share those meanings of terms set forth under the Tennessee Insecticide, Fungicide, and Rodenticide Act, compiled at Tennessee Code, title 43, chapter 8, parts 1 and 2.
- (2) When used in this chapter, unless the context requires otherwise:
 - (a) Act means the Tennessee Insecticide, Fungicide, and Rodenticide Act, compiled at Tennessee Code, title 43, chapter 8, parts 1 and 2;
 - (b) Commerce or words of similar import mean involving payment for an item or payment for services incident to production of the item;
 - (c) Dealer means any person who sells or offers for sale restricted use pesticides; and,
 - (d) EPA means United States Environmental Protection Agency.

Authority: T.C.A. §§ 4-3-203 and 43-8-106.

Chapter 0080-09-04 Pesticide Applications

Chapter 0080-09-04 Pest Control Operators is amended by re-titling the chapter "Pesticide Applications."

Authority: T.C.A. §§ 4-3-203 and 62-21-118.

Rule 0080-09-04-.01 Qualifications of Applicants is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-09-04-.01 Scope.

- (1) This chapter applies to any person who engages in the business of commercial pest control; who makes or supervises any pesticide application for which certification is required; or who inspects or supervises inspections of real property for issuance of a wood destroying insect infestation report.
- (2) This chapter does not apply to sale or distribution of pesticides or to applications of pesticide for which no certification is required.
- (3) Persons holding a charter, license, or certification issued under this chapter shall be responsible for operations under the charter, license, or certification until the document expires or until the department receives written notification from the holder desiring it be terminated. The department shall not refund fees for early termination of any charter, license, or certification issued under this chapter.
- (4) Charters, licenses, and certifications issued under this chapter are not transferable from person to person.

Authority: T.C.A. §§ 4-3-203 and 62-21-118.

Rule 0080-09-04-.02 Certification of Qualifications is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-09-04-.02 Definitions.

- (1) Terms in this chapter share those meanings of terms set forth in the Tennessee Application of Pesticides Act of 1978, T.C.A. §62-21-101, et seq.
- (2) When used in the Act or this chapter, unless the context requires otherwise:
 - (a) Act means the Tennessee Application of Pesticides Act of 1978, compiled at T.C.A. §62-21-101, et seq.;
 - (b) Domiciled and resident at or near the office and supervising on a regular routine work basis under the Act means that a licensee lives within a proximity and reports to the office at a frequency approved by the charter holder as sufficient to oversee operations and needs of the office;
 - (c) Engages in the business of commercial pest control means the advertisement, offer, or sale of:
 1. Pesticide applications for a fee to control identified pests, or
 2. Inspections for wood destroying organisms;
 - (d) Fee means financial or other consideration that is paid or charged for a service;
 - (e) Fumigation means the application of gas even if the substance that is applied is originally a solid or liquid that later turns to gas upon being dispensed;
 - (f) Non-clerical employee means any person engaged in work incident to the handling, transportation, or application of pesticides. Clerical employee means any person engaged solely in office work related to routine documentation and administrative tasks of a business. For purposes of the Act and this chapter, all employees of a pesticide charter holder are either clerical or non-clerical employees but not both;
 - (g) Person means an individual, partnership, corporation, or any other form of legal entity;
 - (h) Pest or disease means any insect, rodent, fungi, bacteria, plant life, or biotic agent that is injurious either to the environment or to the agricultural, horticultural, silvicultural, or other interests of the state. Pest or disease includes insect pests and plant diseases as defined under the Tennessee Plant Pest Act, compiled at T.C.A. §43-6-101, et seq., and may also include any form of animal or plant life, any infectious plant disease, or any plant disorder that manifests symptoms or behavior determined by a federal or state pest prevention agency to be characteristic of infectious disease; and,
 - (i) Presence, immediate presence, or similar words mean physically near another person on the same property.

Authority: T.C.A. §§ 4-3-203 and 62-21-118.

Rule 0080-09-04-.03 Examination of License Applicants is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-09-04-.03 Charter Application and Fees.

- (1) A pesticide charter is required per office for any person who engages in the business of commercial pest control.

- (2) Application for a charter shall be made on forms provided by the department, which shall be completed in full and may include:
- (a) Name of the applicant;
 - (b) Date of birth of any applicant who is an individual or a partner in a general partnership;
 - (c) Proof of one of the following for any applicant who is not an individual or a partner in a general partnership:
 - 1. Entity's registration in its state of incorporation; or,
 - 2. Entity's business license issued by a local governmental authority;
 - (d) Contact information for applicant, to include name of person legally responsible for applicant's operations, telephone number, email address, and address of the principal place of business;
 - (e) Address of office where applicant will engage in the business of commercial pest control;
 - (f) Name and pesticide license number of each licensee assigned to supervise commercial pest control operations under the charter;
 - (g) Proof of bonding and insurance as required under the Act;
 - (h) Solicitors registration. Roster and applicant's written verification of all employees authorized under the charter to solicit pest control business or to enter into contract on the applicant's behalf;
 - (i) Technicians registration. Roster of non-clerical employees who are not included in the solicitors registration; and,
 - (j) Other information as required by the department.
- (3) Charter holders shall notify the department of any changes to the information or contents of an application within 30 days after the change takes place.
- (4) Applicants shall include with their application payment of a charter fee and solicitor and technician registration fee.
- (a) Charter fee. The fee for a pesticide charter is a Tier 9 biennial fee under T.C.A. §43-1-703(f), which may be prorated in the initial term of the charter as a Tier 5 fee for each year remaining in the term.
 - (b) Solicitor and technician registration fee. The fee for solicitor and technician registration is a Tier 2 biennial fee under T.C.A. §43-1-703(f) for each non-clerical employee registered with the department. The solicitor and technician registration fee may be prorated as a Tier 1 fee for each person employed by the charter holder for less than one year preceding the application.
 - (c) Term. All charters expire on June 30 of odd numbered calendar years.
- (6) Applicants for renewal shall submit the appropriate fees and required application materials (e.g. employee rosters, proof of bonding and insurance, etc.) to the department on or before July 1 following expiration.
- (a) If an applicant for renewal fails to pay required fees or to provide required application materials on or before July 16 following expiration of the charter, the applicant shall also be required to pay a late charge assessed under T.C.A. § 43-1-703 prior to renewal of the applicant's charter.
 - (b) Lapse of bonding or insurance at any time shall result in immediate expiration of the charter. Firms shall be afforded a grace period of 30 days to submit proof of valid bonding and insurance to the department without accrual of charges. Following the grace period, firms shall be required to obtain a new charter and pay all associated fees necessary for operation.

(7) The department may deny any application for a charter that is not completed in accordance with this rule.

Authority: T.C.A. §§ 4-3-203, 62-21-111, and 62-21-118.

Rule 0080-09-04-.04 License Categories is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-09-04-.04 License Application and Fees.

- (1) A pesticide application license is required for oversight of technical service work as stated under 0080-09-02-.03 License Categories. Pesticide licenses are issued only to individuals and not formalized business entities.
- (2) Application for a pesticide application license shall be made on forms provided by the department, which shall be completed in full and may include:
 - (a) Name and date of birth of the applicant;
 - (b) Contact information for applicant, to include employer's name, telephone number, email address, and address of the principal place of business;
 - (c) Address of charter holder's office where licensee will be employed;
 - (d) Proof of current pesticide certification in the category necessary for licensure;
 - (e) Proof of current pesticide license examination passage; and,
 - (f) Other information as required by the department.
- (3) Licensees shall notify the department of any changes to the information or contents of an application within 30 days after the change takes place.
- (4) The fee for any pesticide application license, except a PCC license, is a Tier 2 biennial fee under T.C.A. §43-1-703(f), which may be prorated as a Tier 1 fee for each year remaining in the term. The fee for a PCC license is a Tier 10 biennial fee, which may be prorated as a Tier 6 fee for each year remaining in the term.
- (5) All pesticide application licenses expire on June 30 of odd numbered calendar years.
- (6) Applicants for renewal shall submit the appropriate license fee and proof of current pesticide certification required for the license to the department on or before July 1 following expiration. If an applicant for renewal fails to pay required fees on or before July 16 following expiration of the license, the applicant shall also be required to pay a late charge assessed under T.C.A. § 43-1-703 prior to renewal of the applicant's license. If an applicant fails to maintain pesticide certification required for the license, the license shall expire and require examination for both the applicable certification and the license before being reissued.
- (7) The department may deny any application for a license that is not completed in accordance with this rule.

Authority: T.C.A. §§ 4-3-203, 62-21-111, and 62-21-118.

Rule 0080-09-04-.05 License Requirement for Active Practice and Certification is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-09-04-.05 Certification Application and Fees.

- (1) Pesticide certification is required for performance of technical service work as stated under 0080-09-02-.04 Certification Categories. Pesticide certifications are issued only to individuals and not to formalized business entities.
- (2) Application for pesticide certification shall be made on forms provided by the department, which shall be completed in full and may include:
 - (a) Name and date of birth of the applicant;
 - (b) Contact information for applicant, to include employer's name, telephone number, email address, and address of the principal place of business;
 - (c) Address of charter holder's office where the applicant will be employed;
 - (d) Proof of pesticide certification examination passage within the previous year; and,
 - (e) Other information as required by the department.
- (3) Certification holders shall notify the department of any changes to the information or contents of an application within 30 days after the change takes place.
- (4) All certifications issued under this rule expire on a three-year certification cycle, beginning June 30, 2023, and again on June 30 of every third year thereafter. Applicants for renewal of either commercial applicator or private applicator certifications must recertify by completing all testing requirements for issuance of the original certification, as detailed under 0080-09-02-.05 License and Certification Testing.

(a)

1. In lieu of testing for recertification, applicators may recertify by accrual of approved continuing education units (CEU) credits prior to expiration of their certification, according to the following schedule:

Service Category Number	Service Category Description	CEU Credits Required for Recertification
C01	Agricultural Pest Control	18
C02	Forest Pest Control	12
C03	Ornamental and Turf Pest Control	18
C04	Seed Treatment	6
C05	Aquatic Pest Control	12
C06	Right-of-Way Pest Control	18
C07	Industrial, Institutional, Structural, and Health-Related Pest Control	21
C08	Public Health Pest Control	18
C09	Limited Herbicide Applicator	12
C10	Demonstration, Research, and Regulatory Pest Control	18
C11	Wood Preservatives	6
C12	Pesticide Dealer	18
C13	Antifouling Marine Paint	6
C14	Microbial Pest Control	12
C16	Sewer Line Treatment	6
	Private Applicator	3

2. External training requirement.

- (i) To recertify by accrual of CEUs, applicators in all service categories except C07 must attend at least half of the required CEUs as external trainings. C07 applicators must attend at least two-thirds of the required CEUs as external trainings.

- (ii) External training means that CEU attendees and presenters are not employed by the same charter holder and that the training is conducted in a manner that allows presenters and attendees to interact in real time.
- (b) Continuing Education Units.
- 1. Courses.
 - (i) Course presenters. CEU course presenters must be:
 - (I) Certified in the category for which the CEU is being offered;
 - (II) A member of the academic community related to pesticide research that is the subject of the CEU;
 - (III) Regulatory or extension personnel in the pesticide field; or,
 - (IV) A member of industry with direct work experience related to pesticides that are the subject of the CEU, as evidenced by pesticide registration, certification, or licensing in Tennessee or another state.
 - (ii) Course materials. At least 30 days prior to the course offering, presenters must submit to the department for review a CEU course application, overview, description of class time anticipated for the course, and any supporting course materials. For courses offered by educational institutions, presenters must submit these materials to the University of Tennessee, Pesticide Safety Education Program (PSEP).
 - (iii) Approval and verification. Courses approved for credit will receive written confirmation from the department detailing the number of CEU credits eligible for the proposed course. Courses must be presented according to the approved application, curriculum, and materials. Representatives of the department or PSEP may attend approved courses, without incurring registration fees, for purposes of verifying course content and presentation. The department may deny approval for any course materials or presentation inconsistent with requirements of the certification category in which the course is being offered.
 - (iv) CEU courses are approved at the rate of one CEU credit per 50 minute attendance hour.
 - 2. Accrual.
 - (i) Persons attending or presenting a CEU course receive CEU credits in the amount and certification category as approved by the department for the course.
 - (ii) Attendance rosters. CEU course attendance rosters, including course presenters, must be submitted to the department within 30 days following presentation of the CEU course. Failure to submit attendance rosters timely may result in denial of CEU credits for the course attendees and denial of future applications for CEU course approval by the presenter(s) for up to five years.
 - (iii) Expiration. CEU credits accrued in previous certification periods are not assignable for CEU credit in subsequent certification periods.
 - (iv) The number of CEU credits required for recertification may be prorated per year for persons obtaining original certification during the current certification period.
 - 3. The department may revoke course approval or deny CEU credit for any failure to comport with this rule.

- (b) Reciprocity. In lieu of testing for recertification or acquiring CEU credits, applicants may apply for

recertification based on reciprocity with another state. Applicants for reciprocal recertification must show proof of equivalent recertification in the reciprocating state. A list of reciprocating states and the recertification equivalency requirements in those states is published at <https://www.tn.gov/agriculture/businesses/pesticides/certification.html>.

- (c) Given extraordinary circumstances, the department may in its discretion extend the deadline for recertification testing or accrual of CEU credits applicable to particular applicators or service categories.
 - (d) Failure to recertify within the certification period, by a manner authorized under this rule, shall cause the certification to expire.
- (5) Fees.
- (a) Commercial applicator. Other than examination fees, there is no fee for certification or recertification of commercial applicators.
 - (b) Private applicator. The fee for Private Applicator Certification is a Tier 1 fee under T.C.A. §43-1-703(f). There is no fee for recertification of private applicators.
- (6) The department may deny any application for a certification that is not completed in accordance with this rule.

Authority: T.C.A. §§ 4-3-203 and 62-21-118.

Rule 0080-09-04-.06 Requirements for Licensees in Fumigation is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-09-04-.06 Records.

- (1) Commercial applicators shall maintain records for each custom application of pesticides and each application of restricted use pesticide that they apply or that they authorize by presence.
- (2) Private applicators shall maintain records for each application of restricted use pesticide that they apply or authorize by presence.
- (3) Each application record shall include:
 - (a) Applicator's first and last name and certification number;
 - (b) Trade name, as it appears on the product label, of the pesticide applied;
 - (c) Address where the application was made;
 - (d) Date of the application;
 - (e) Target area (e.g. crop, plant, house, business, or building where the pesticide was applied);
 - (f) Target pest. For mixtures of pesticides made in a single application, the record must clearly indicate which pests were targeted by the separate pesticides in the mixture;
 - (g) Total amount of pesticide applied;
 - (h) Percentage use dilution;
 - (i) Application rate;
 - (j) First and last name of property owner or tenant where pesticide applied; and,

- (k) For each application of a restricted use pesticide, the application record shall include EPA registration number of the pesticide applied and the time of its application.
- (4) Applicators shall supply a copy of required application records within 48 hours of request by a property owner or tenant where the pesticide was applied.
- (5) Applicators shall maintain records required under this rule for a period of two years from the date of application.

Authority: T.C.A. §§ 4-3-203 and 62-21-118.

Rule 0080-09-04-.07 Requirements for Licensees in Wood Destroying Organisms is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-09-04-.07 Inspections.

- (1) The department may enter any location where the department has reason to believe a person is engaged in the business of commercial pest control or has made application of pesticide otherwise regulated under this chapter. The department may enter that location for the purposes of sampling; examination of equipment, pesticides, and application sites; and examining and copying of records, as necessary to determine compliance with the Act and this chapter.

Authority: T.C.A. §§ 4-3-203 and 62-21-118.

Rule 0080-09-04-.08 Certification of Commercial Pesticide Applicators is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-09-04-.08 Requirements of Specific Categories and Pesticides. The following requirements apply in addition to use and recordkeeping requirements of pesticide applications under this chapter.

- (1) Fumigations poisonous to humans.
 - (a) When any fumigation application is made of a pesticide that is poisonous to humans, a FUM or FUS licensee must be present at the application site; actively in charge of the work; and ensure the following:
 1. At least one gas mask, capable of protecting its wearer from the pesticide being applied, must be readily available at the application site for each person present during the application;
 2. Warning signs must be conspicuously posted at all entrances to the structure or area of the fumigation site. Signs must clearly indicate that the property is being fumigated with poisonous gas and that no one should enter;
 3. A guard must be posted at all entrances available to the public and must prevent entry by any unauthorized person. All entry doors where a guard is not posted must be locked and patrolled regularly by a guard. All guards shall have ready access to a gas mask capable of protecting its wearer from the pesticide being applied; and,
 4. The structure or area of the fumigation site must be cleared of all fumigants in accordance with label instructions before re-entry is authorized.
- (2) Limited herbicide applicators.
 - (a) Limited herbicide applicators are exempt from charter, licensing, and recordkeeping requirements associated with applications of Glyphosate covered by the C09 certification, provided that:

1. Glyphosate application equipment is limited to a single, hand-held nozzle supplied by a tank with a maximum capacity of 25 gallons and an electric or hand-powered pump with a maximum discharge rate of 1.5 gallons per minute;
 2. The name of the business and certification number are displayed on company vehicles in the same manner as required for display of charter numbers under the Act;
 3. Records are made to include the date and property address of each application, and the records are maintained for two years from the date of application; and,
 4. The certification holder does not allow any uncertified person to make application of the pesticides even under direct supervision.
- (b) Applications of Glyphosate stored, provided, or mixed by a homeowner or renter are deemed personal use applications of the owner or renter.
- (3) Wood destroying organisms.
- (a) Contracts.
1. WDO licensees shall ensure that a written contract is executed in duplicate prior to any pesticide application for control of wood destroying organisms. Upon execution, one copy of the contract shall be retained by the chartered pest control operator, and one copy of the contract shall be provided to the party contracting for the pesticide service.
 2. Each contract for control of any wood destroying organism must include, prior to execution:
 - (i) A date of inspection and graph of the property covered by the contract, showing portions of the property exhibiting the presence of visible wood destroying insects or damage caused by wood destroying insects;
 - (ii) A provision for transfer of the contract to subsequent owners or renters of the property within the term of the contract; and,
 - (iii) A unique number to distinguish the contract from other contracts issued by the chartered pest control operator.
 - (iv) Any contract for control of termites shall include a one-year warranty providing for retreatment of the property.
 - (v) Guarantees for damage caused by wood destroying organisms during the term are optional. Any contract that does not provide a damage guarantee shall clearly indicate the absence of a damage guarantee in one-half inch tall letters on the front of the agreement.
 3. For each property under contract, charter holders must conduct an annual inspection of the property and document the date of inspection. If termite activity is discovered inconsistent with the previous graph, the charter holder must make application of an appropriate pesticide and create a new graph of the property showing the new termite activity. Copies of records for annual inspections and treatments shall be made available to owners or tenants of the property in accordance with other provisions of this chapter.
- (b) Applications.
1. Termites.
 - (i) Notwithstanding allowances under any state or federal law, applicators shall not exceed a 10% variance of label directions when mixing or applying termiticides.
 - (ii) Applicators may perform less than complete treatments if:

- (I) The applicator informs the owner or tenant of the property contracting for service regarding the risks of accepting a less than complete treatment;
 - (II) Acceptance of less than complete treatments is noted in bold font within the contract for services and initialed by the owner or tenant of the property contracting for service; and,
 - (III) The applicator marks on the graph of the property where less than complete treatments will be performed.
- (iii) Unless contrary to label directions, pretreatments for new construction shall be completed within 90 days after backfill of the project.

2. Wood destroying beetles.

(i) Active infestations.

- (I) Prior to making an application for control of wood destroying beetles, the applicator must inform the property owner or agent of potential risks in making the application and alternative ways to control the beetles and avoid the risks of pesticide application, e.g. by removal and replacement of infested wood.

(ii) Preventative treatments of existing structures.

- (I) Applicators may make pesticide applications to prevent wood destroying beetles in existing structures only if:
 - I. Applied according to label directions, and
 - II. Prior to application, the applicator tests the wood moisture content in the target area using an instrument designed to measure moisture content of wood;
 - III. At least five areas where the wood moisture content is tested show moisture content of at least 18%; and,
 - IV. The applicator provides a written report to the property owner or agent detailing these findings to be included in the contract for control of the wood destroying organism.

(c) Records.

- 1. Charter holders shall maintain copies of all contracts under this rule for two years following expiration of the contract.
- 2. Charter holders shall maintain inspection records and associated graphs under this rule for two years following the date of inspection.

Authority: T.C.A. §§ 4-3-203 and 62-21-118.

Rule 0080-09-04-.09 Recordkeeping Requirements for Commercial Pest Control Operators and Commercial Applicators is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-09-04-.09 Violations.

- (1) In addition to other requirements of this chapter,

- (a) Certification holders shall maintain areas where pesticides and equipment are housed so as to be readily accessible for inspection;
 - (b) Certification holders shall maintain records required under this chapter so as to be readily available for inspection;
 - (c) Certification holders shall give full information as to the manner of any pesticide application and source of pesticides applied or pesticides held for application;
 - (d) Certification holders shall manage and dispose of pesticides in a manner consistent with this division of rules;
 - (e) A person shall not apply pesticides for which certification is required unless certified or operating under direct supervision of a certified person. This provision does not limit stricter application requirements otherwise included in this chapter of rules;
 - (f) A person shall not authorize by direct supervision any application of pesticide unless certified in the category of service for which the pesticide is applied;
 - (g) A person shall not oversee the technical service work of a branch office unless licensed in the category of services for which pesticide services are advertised or applied;
 - (h) Certification holders shall not apply or supervise applications of pesticide inconsistent with label directions;
 - (i) Certification holders shall not give less than complete treatments of pesticide unless:
 - 1. The less than complete treatment is authorized by label directions or state or federal law;
 - 2. A complete treatment is ill-advised or prevented by physical conditions of the target area; or,
 - 3. The property owner or tenant for whom the treatment is applied requests the less than complete treatment;
 - (j) Certification holders shall not falsify the presence of an insect pest or any portion of a record required under this chapter;
 - (k) Charter holders shall not employ any person as a solicitor or non-clerical employee unless the person is registered with the department;
 - (l) A person shall not knowingly provide any false, misleading, or incorrect information regarding the person's sale, offer for sale, or distribution of pesticides in commerce;
 - (m) A person shall not interfere with a representative of the department in the performance of his or her duties; and,
 - (n) Charter and certification holders shall not violate any order issued by the department.
- (2) Charter holders, licensees, and certification holders are responsible for violations of the Act or this chapter when committed by either the person or his agent.
 - (3) Each violation of the Act or this chapter is grounds for issuance of stop work or disposal orders against any pesticide held by the violator or his agent; denial or revocation of any charter, license, or certification issued by the department; actions for injunction; and imposition of civil penalties or criminal charges against the violator.

Authority: T.C.A. §§ 4-3-203 and 62-21-118.

Repeal
Chapter 0080-09-02
Service Categories and Testing

Rule 0080-09-02-.06 Recertification Requirements is repealed in its entirety.

Authority: T.C.A. §§ 4-3-203, 43-8-106, and 62-21-118.

Rule 0080-09-02-.07 Recordkeeping Requirements of Private Applicators is repealed in its entirety.

Authority: T.C.A. §§ 4-3-203, 43-8-106, and 62-21-118.

Rule 0080-09-02-.08 Use of Restricted Use Pesticides is repealed in its entirety.

Authority: T.C.A. §§ 4-3-203, 43-8-106, and 62-21-118.

Rule 0080-09-02-.09 Exemptions is repealed in its entirety.

Authority: T.C.A. §§ 4-3-203, 43-8-106, and 62-21-118.

Rule 0080-09-02-.10 Violations is repealed in its entirety.

Authority: T.C.A. §§ 4-3-203, 43-8-106, and 62-21-118.

Rule 0080-09-02-.11 Pesticide Management and Disposal is repealed in its entirety.

Authority: T.C.A. §§ 4-3-203, 43-8-106, and 62-21-118.

Rule 0080-09-02-.12 Pesticide Product Registration Fee is repealed in its entirety.

Authority: T.C.A. §§ 4-3-203, 43-8-106, and 62-21-118.

Rule 0080-09-02-.13 Dicamba is repealed in its entirety.

Authority: T.C.A. §§ 4-3-203, 43-8-106, and 62-21-118.

Rule 0080-09-02-.14 Reserved is repealed in its entirety.

Authority: T.C.A. §§ 4-3-203, 43-8-106, and 62-21-118.

Chapter 0080-09-04
Pesticide Applications

Rule 0080-09-04-.10 Requirements for Licensees in Aquatic Weed Control is repealed in its entirety.

Authority: T.C.A. §§ 4-3-203 and 62-21-118.

Rule 0080-09-04-.11 Requirements for Spot Treatment Only in Lawn Maintenance is repealed in its entirety.


Authority: T.C.A. §§ 4-3-203 and 62-21-118.

Rule 0080-09-04-.12 Fees is repealed in its entirety.

Authority: T.C.A. §§ 4-3-203 and 62-21-118.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 2/22/2021

Signature: 

Name of Officer: Charlie Hatcher, DVM

Title of Officer: Commissioner

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

Department of State Use Only

Filed with the Department of State on: 2/23/2021



Tre Hargett
Secretary of State

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